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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,746	08/19/2003	Sofia Hermansson	018798-168	3752
21839	7590	11/08/2005	EXAMINER	
BUCHANAN INGERSOLL PC (INCLUDING BURNS, DOANE, SWECKER & MATHIS) POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			GIBSON, KESHIA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/642,746	Applicant(s) HERMANSSON ET AL.	
	Examiner Keshia Gibson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/19/03, 12/17/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Applicant is advised that the current application is considered to contain multiple species. However, for purposes of this Office Action, the Examiner has not required a restriction/election be made. Nevertheless, if appropriate, the Examiner may require a restriction/election requirement at any point during the prosecution of the current application.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Sweden on 8/30/2002. It is noted, however, that applicant has not filed a certified copy of the Sweden 0202566-6 application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a fastener being arranged to be fixed on the inside of the underpants of a wearer, does not reasonably provide enablement for a fastener being located on a fixing tongue and the same fastener also being arranged to be affixed to the inside of the underpants of the wearer. The specification does not

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enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The antecedent basis for the fastener of claim 6 currently lies in it being the fastener of the fixing tongue. However, the fixing tongue is not disclosed as being affixed to the inside of the underpants, but instead to the outside thereof. Therefore, the fastener of Claim 6 is considered to be non-enabled within the scope of the disclosure.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5-8, and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Komatsu et al. (JP 11-318985).

In regard to Claims 1-3, 5, and 7-8, Komatsu et al. disclose a disposable incontinence pad comprising an absorbent part 1 with a liquid-permeable upper layer 2, a lower backing layer 3, an absorbent body 1, and further comprising a fastening system 7/8/10 that includes a fixing tongue 7 extending from the front end portion of the pad; the fixing tongue is an extension of the pad layers, includes a fastener 10 to be fixed to the outside of an pair of underpants, and can be folded around the waist of the pair of underpants (whole document).

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In regard to Claim 6, the fastener may also be fixed to the inside of the pants during use (especially see Fig.1 and [0016]-[0017]).

In regard to Claim 12, the fixing tongue comprises a band of adhesive ([0016]-[0017]).

In regard to Claims 13 and 15, the pad comprises a second fixing tongue 8 comprising a second fastener 10; the fastener is arranged on the backing layer 3 (Figs., [0014]).

In regard to Claim 14, the fixing tongue 7 can be separated from the absorbent part 1 of the pad by cutting it with pair of scissors or similar device. It is further pointed out that the recitation "can be separated from the absorbent part of the incontinence pad" is considered to be functional language. It has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-6, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher (US 5,290,270).

In regard to Claim 1, Fisher discloses an incontinence pad comprising an absorbent part having a lower backing layer 50, an absorbent body 54, and a fastening system having a fixing tongue 48 (whole document). Fisher does not expressly disclose that the absorbent part has a liquid-permeable upper layer. However, it is known in the art to provide an absorbent body sandwiched between a liquid-permeable upper layer (topsheet) and a backing layer (backsheet). Thus, it would have been obvious to one of ordinary skill in the art to provide the absorbent part with an upper liquid permeable layer since it was known in the art to provide absorbent pads with a liquid permeable upper layer (topsheet).

In regard to Claims 2-6, the fixing tongue is an extension of the layers of the pad, includes at least one fastener 52 arranged to be fixed to the inside of a pair of underpants; the entire fixing tongue comes to lie inside the edges of the absorbent when the tongue is folded over (Figs. 4-5, column 3, line 51-column 4, line 55).

In regard to Claim 12, the fixing tongue comprises a band of adhesive (Figs. 4-5, column 3, line 51-column 4, line 55).

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In regard to Claim 14, the fixing tongue 48 can be separated from the absorbent part 1 of the pad by cutting it with pair of scissors or similar device. It is further pointed out that the recitation "can be separated from the absorbent part of the incontinence pad" is considered to be functional language. It has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Maham*, 2 USPQ2d 1647 (1987). *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).

10. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Komatsu et al. or Fisher.

In regard to Claim 9, Komatsu et al. and Fisher both disclose an adhesive fastener covered by a protective layer (11 and 58, respectively), but do not expressly disclose that the adhesive is a pressure sensitive adhesive. However, it is known in the art to use a pressure sensitive adhesive for attachment sanitary articles to the wearer's undergarments. Thus, it would have been obvious to one of ordinary skill in the art to select a pressure sensitive adhesive, since it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

In regard to Claim 10, Komatsu et al. and Fisher both disclose the claimed invention but do not expressly disclose that the backing layer is treated with a release agent.

However, it is known in the art to treat the backing layers and release sheets of sanitary

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pads having adhesive so as to increase releasability. Thus, it would have been obvious to one of ordinary skill in the art to treat the backing layer with a release agent since it was known in the art to treat such layers with a release agent to increase releasability.

In regard to Claim 11, Komatsu et al. and Fisher both disclose the claimed invention but do not expressly disclose that the fastener is a hook and loop fastener with a protective cover connected to the backing layer. However, it would have been obvious to one of ordinary skill in the art to provide the fastener of Komatsu et al. as a hook and loop fastener since hook-and-loop fasteners and adhesive layers are art recognized equivalents for their use as attachment fasteners and the selection of any of these known equivalents to attach a sanitary pad to an absorbent article would be within the level of ordinary skill in the art.

11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Komatsu et al. or Fisher in view of Morte et al. (US 5,291,617).

In regard to Claim 16, Komatsu et al. and Fisher both disclose the claimed invention but do not expressly disclose that the area absorbent part of the pad has a greatest extent in the traverse direction near the fixing tongue and a smallest extent located away from the fixing tongue. Morte et al. disclose an absorbent pad 32 for a pair of underpants having a triangular shape, with the greatest extent in the traverse direction being located nearer the waist area than a smallest extent of the pad located away from the waist area (Figures). Morte et al. disclose that positioning the a pad having a triangular shaper in this manner permits moisture to wicked upward away from the crotch and into

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an air exposed to more air, implicitly leading to a drier feeling for the wearer. One would have been motivated to modify the absorbent pads of either Komatsu et al. or Fisher to have a triangular shape, as taught by Morte et al., since doing so would allow permit an increased sense of dryness to the wearer. Thus, it would have been obvious to one of ordinary skill in the art to modify the absorbent pads of either Komatsu et al. or Fisher to have a greatest extent in the traverse direction near the fixing tongue and a smallest extent located away from the fixing tongue since doing so would allow permit an increased sense of dryness to the wearer.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Isaacson (US 2445220), Khan (US 4968312), Grizzaffi (5275592), Pudlo (5618279), and Johnson (US 6406462).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson
Examiner
Art Unit 3761

klg 11/2/05

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

